

1 NICHOLAS STROZZA, ASSISTANT U.S. TRUSTEE
2 State Bar #CA 117234
3 WILLIAM B. COSSITT, #3484
4 Office of the United States Trustee
5 300 Booth Street, Room 3009
6 Reno NV 89509
7 Telephone: (775) 784-5335
8 Fax: (775) 784-5531

9
10 Attorneys for Acting United States Trustee
11 August B. Landis

12
13
14
15
16 UNITED STATES BANKRUPTCY COURT

17 DISTRICT OF NEVADA

18 In re:) Case no: BK-N-13-51562-MKN
19) Chapter: 11
20 GLOBAL AXCESS CORP.,)
21) US TRUSTEE'S OBJECTION TO
22) DEBTORS' MOTION TO APPROVE
23) POSTPETITION BORROWING
24)
25) Hearing Date: August 8, 2013
26) Hearing Time: 10:00 a.m.
27) Est. Time Req.: 2 hrs.
28 Debtor.)

19 The Acting United States Trustee ("US Trustee"), hereby objects to the Debtors' motion
20 to approve postpetition borrowing, Docket #14 (hereinafter "Motion"). The US Trustee
21 represents as follows:

22 1. Insufficient notice and opportunity to be heard have not been provided to meet due
23 process;

24 2. The proposed terms of the lending violate the process and purpose of chapter 11 and
25 are over-reaching by the proposed lender; and

26 3. The proposed lender, not the Debtors or creditors, is the primary beneficiary of the
27 proposed lending and sale.

This Objection is made pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the following points and authorities, the pleadings and papers on file with this Court, of which the US Trustee requests the Court take judicial notice, and any argument or evidence presented at the hearing.

POINTS AND AUTHORITIES

STANDING

Pursuant to 28 U.S.C. § 586(a)(3), the US Trustee is charged with supervising the administration of cases and trustees under the Bankruptcy Code. To enable the US Trustee to carry out that duty, Congress has granted the US Trustee standing to raise and to “appear and be heard on any issue in any case or proceeding” brought under the Bankruptcy Code. 11 U.S.C. § 307.

FACTS

1. August 5, 2013, after 6:00 p.m., the Debtors filed voluntary chapter 11 bankruptcy cases in the unofficial northern division of the District of Nevada. Docket #1.

2. The Order Shortening Time requires opposition to the Motion to be filed no later than August 8, 2013 at 8:00 a.m.

3. Thousands of pages of pleadings have been filed with the Court, including the Motion, the Supporting Declaration of David Bagley, and the Debtors' motion to approve the sale procedures. Docket #'s 14, 15, and 33.

AUTHORITIES

The purpose of chapter 11 is to allow a debtor a breathing spell to attempt to reorganize its debts. A proper case allows for meaningful participation of an unsecured creditors' committee. 11 U.S.C. §§ 1102 and 1103. Approval of a sale of a debtor's primary assets

1 deprives any objecting party of an opportunity to negotiate through the plan process and
2 probably any recourse on appeal. 11 U.S.C. § 363(m). Sale of a debtor's primary assets may
3 constitute an impermissible "sub rosa" plan. See, In re Braniff Airways, Inc., 700 F.2d 935 (5th
4 Cir. 1983).

5 The sale of all of a debtor's assets should not include the avoiding powers under Section
6 544(b) since these powers are not an asset of the estate but merely a device to enhance the estate
7 for the benefit of creditors. See, In re Cybergenics Corp., 226 F.3d 237 (3d Cir. 2000).

8

APPLICATION OF AUTHORITES AND ARGUMENTS

9

10 The Motion should be continued until the parties in interest, including an unsecured
11 creditors' committee, have a reasonable opportunity to read the Motion, and the proposed sale
12 motion and prepare proper objections. Many of the possible interested parties have not yet even
13 received notice that the bankruptcies have been filed. They certainly have not had time to retain
14 counsel and prepare objections.

16 The Debtors' alleged cash emergency is the result of either not filing soon enough or is
17 being manufactured by the current secured creditor, who has also dictated the one-sided
18 proposed lending terms. The previous forbearance agreements provided interim relief in the \$1.5
19 million dollar range, without requiring the "re-borrowing" of an additional \$7,578,233. Docket
20 #14, pgs. 3 and 10.

22 Approval of the Motion yields the primary benefit of the case to only the secured
23 creditors. No other parties in interest, certainly not the unsecured creditors, will receive any
24 hope of a distribution. Approval of the Motion grants complete control of these cases to the
25 secured creditor. Approval of the Motion will "tilt the conduct of these cases and prejudice the

1 powers and rights that the Bankruptcy Code confers for the benefit of all creditors and prevent
2 motions by parties in interest from being decided on their merits.” Docket #14, pg. 17.

3 **CONCLUSION**

4 WHEREFORE, for all the reasons stated above, the US Trustee respectfully requests the
5 Court deny the Motion, and grant such other relief as the Court deems proper.

6
7 DATED this 8th day of August, 2013.

8 Respectfully submitted,

9 Nicholas Strozza, State Bar # CA 117234
10 William B. Cossitt, State Bar #3484
11 300 Booth Street, #3009
12 Reno NV 89509
13 (775) 784-5335

14 /s/ WILLIAM B. COSSITT

15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorneys for Acting United States Trustee
August B. Landis

CERTIFICATE OF SERVICE

1. On August 8, 2013, I served the foregoing US TRUSTEE'S OBJECTION TO DEBTORS' MOTION TO APPROVE POSTPETITION BORROWING
2. I served the above-named document (by the following means to the persons as listed below:
 - a. ECF System:
 - BRIAN P. HALL bhall@sgrlaw.com
 - GABRIELLE A. HAMM bknottices@gordonsilver.com;bankruptcynotices@gordonsilver.com
 - JENNIFER A. SMITH cobrien@lionelsawyer.com, bklscr@lionelsawyer.com
 - KAARAN E. THOMAS kthomas@mcdonaldcarano.com, mmorton@mcdonaldcarano.com
 - U.S. TRUSTEE - RN - 11 USTPRegion17.RE.ECF@usdoj.gov
 - RYAN J. WORKS rworks@mcdonaldcarano.com, kbarrett@mcdonaldcarano.com,bgrubb@mcdonaldcarano.com

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 8TH day of August, 2013.

/s/ Kimberly Massey-Flores

Kimberly Massey-Flores